avoid the bequest. *In re Stirk's Estate, Appeal of Wood et al.* (Pa. 1911) 81 Atl. 187.

It is obvious that testatrix could have had no desire or intention that the trust company should receive her residuary estate, amounting to a large sum, as an absolute gift, but supposed this was a means of carrying out her charitable purpose. Similar bequests have been avoided by the heirs, see *Jones* v. *Badley,* L. R. 3 Eq. Cas. 634; *Muckleston* v. *Brown,* 6 Ves. 52. Whenever an absolute estate is devised upon a secret trust, any assent to the purpose of the testator is sufficient to impress a trust upon the property. Silent acquiescence has the same effect as a positive promise, for fraud is not tolerated in any form. *Russell* v. *Jackson,* 10 Hare 204 (9 Hare 387). However, a knowledge of the purpose of the gift is essential, for there must exist some assent, express or implied, to enable equity to fasten a trust upon an absolute devise of this character. *Schultz's Appeal,* 80 Pa. St. 396; *Wallgrave* v. *Tebbs,* 2 Kay & J. 313. This may be constructively implied from the knowledge of the agent. Any fraud on his part binds the principal, for a taint in the original transaction "runs through the derivative interest." *Russell* v. *Jackson, supra; Hooker* v. *Axford,* 33 Mich. 453. The trust company was held chargeable with a knowledge which its officer was presumed to possess from his familiarity with testatrix's original purpose and his long experience as trust officer. Speaking of a somewhat similar case, Judge FINCH said: "Any devise or bequest of this character is dangerous and indefensible. It exposes testators to the suggestion of unnecessary difficulties as inducements to the artifice of an absolute devise concealing an illegal trust. It exposes the devisee to temptation and, even when he acts honestly, to severe and unrelenting criticism. It subserves no good or useful purpose. If we sustain it, we admit that any statute may be thus evaded and that equity can not redress the wrong." *In re O'Hara,* 95 N. Y. 403, 422.

WILLS—CONSTRUCTION—PRECATORY WORDS.—Testatrix bequeathed certain of her property "to start and use for a Women's Christian Association * * * the institution to be carried out upon the plan of the Women's Christian Association of Philadelphia," and stated that she "would like the executive committee to consist of" Mrs. J. K. Ralston and others. Mrs. Ralston was an attesting witness. *Held,* that the words designating the personnel of the committee were mandatory, as expressive of testatrix's manifest intent. *In re Stinson's Estate, Appeal of Sower et al.* (Pa. 1911) 81 Atl. 207.

Difficulty arises in determining whether words are used in a precatory sense, denoting merely desire or recommendation, or whether they manifest a mandatory and imperative intent. The general rule in Pennsylvania has been that the expression of a desire or a wish of the testator as to a specific disposition of his property, if standing alone, constitutes a valid devise or bequest, but when such an expression has been used after an absolute disposition of his property it is not controlling and can not defeat the prior estate. *Hopkins* v. *Glunt,* 111 Pa. St. 287, 2 Atl. 183; *Burt* v. *Herron,* 66 Pa. 400; *Pennock's Estate,* 20 Pa. St. 268, 59 Am. Dec. 718. It will be noticed that the gift was given absolutely and without reservation for the object and

purpose of the charity named, but testatrix in a later portion of her will indicated a preference as to the management. This was however held to be a "continuance of her expressed intention as to how her intended charity was to be carried out" and of a binding character. This decision, while harmonious with testatrix's scheme, nevertheless apparently infringes on the former Pennsylvania decisions, for testatrix employed words of direct disposition of the estate, and used the expression "appoint or wish" in regard to the plan of the charity, whereas her selection of the committee was indicated by the word "wish" standing alone. From this it might be well argued that the difference in expression indicates in the latter case a simple preference instead of a positive direction as in the former clause.

WILLS—WITNESSES—DISQUALIFYING INTEREST.—In the case directly above, the court after deciding that testatrix's appointment of an executive committee was binding, *held,* that it imposed duties of such a material character as to constitute an interest in the will and disqualified the witness under the statute requiring disinterested attesting witnesses. *In re Stinson's Estate, Appeal of Sower et al.* (Pa. 1911) 81 Atl. 207.

This is noteworthy in that it extends the interest which will disqualify an attesting witness beyond what has hitherto been the Pennsylvania rule. By the decision in *Kessler's Estate,* 221 Pa. 314, 70 Atl. 770, 128 Am. St. Rep. 741, the interest should "exist at the time of the execution of the will, either by the terms of the will itself, or by reason of the attesting witness being then interested in the religious or charitable institutions for which provision is made." That is, an interest "as legatee or devisee" or a "pecuniary benefit or advantage" or else an interest "at the time of attestation in religious or charitable institution to be benefited thereby." But the court in the principal case says it would strike down the act to allow its application only when the charity is in existence at the time of attestation. It should make no difference whether the charity is to come into being in the future or not. The interest is not rendered "uncertain, remote or contingent" by reason of any such fact. This would seem sound for the act was intended to compel attestation by disinterested witnesses and a witness might be interested in a future charity as well as in one already in existence although STEWART, J. dissenting, argues in a forceful style that this places a construction upon the act that is impracticable and that allows a "mere possibility" to defeat testator's object.